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MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606			SHELEHEDA, JAMES R	
			ART UNIT	PAPER NUMBER
			2614	

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,430

Applicant(s)

KRISHNAN ET AL.

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/06/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, filed 03/06/05, with respect to the rejection(s) of claim(s) 1-41 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Butler et al. (US 2002/0007493), Zigmond et al. (6,698,020) and Vogel (5,446,488).

2. The Official Notice presented in the prior action stating that it is notoriously well known in the art that overlay windows can utilize any display characteristic desired, including any particular size, shape, or position on screen, was not traversed and is accordingly taken as an admission of the fact noted.

3. The Official Notice presented in the prior action stating that it is notoriously well known in the art to make selections between a series of items randomly, was not traversed and is accordingly taken as an admission of the fact noted.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-17, 19, 22, 23, 25-36, 38, 39 and 41 are rejected under 35 U.S.C.

103(a) as being unpatentable over Butler et al. (Butler) (US 2002/0007493A1) in view of Zigmond et al. (Zigmond) (6,692,020).

As to claim 1, Butler discloses a method of presenting entertainment program material (paragraph 13), comprising:

providing a segment of programming (paragraph 32);

providing a plurality of segments of ancillary information relevant to the segment of programming (paragraph 19);

presenting a first presentation of the segment of programming (paragraph 15 and 19) having a first window overlaying the segment of programming (paragraphs 20, 21 and 58), the first window containing a first segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and a window overlaying the segment of programming (paragraph 20, 21 and 58), the window containing a segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), he fails to specifically disclose a second segment of ancillary information relevant to the segment of programming, wherein the first and second segments of ancillary information are selected from the plurality of segments of ancillary information in accordance with a selection algorithm, and wherein the selection

algorithm is based upon at least one of 1) a count of a number of presentations of the segment of programming and 2) a random selection algorithm.

In an analogous art, Zigmond discloses a broadcast receiving system (Fig. 3; column 7, lines 1-25) which will present a first segment of information with a first content presentation (advertisement inserted into a received program; column 7, lines 26-36) and present a second segment of information with a second presentation of the content (updated advertisement in playback of recorded program; column 14, lines 1-12), using a selection algorithm (column 11, lines 31-49) based upon a count of a number of presentations of the segment of programming (column 14, lines 1-12 and column 13, lines 40-47) for the typical benefit of ensuring that a user is always provided with current advertising that they will be interested in (column 5, lines 1-14 and column 14, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include a second segment of ancillary information relevant to the segment of programming, wherein the first and second segments of ancillary information are selected from the plurality of segments of ancillary information in accordance with a selection algorithm, and wherein the selection algorithm is based a count of a number of presentations of the segment of programming, as taught by Zigmond, for the typical benefit of removing obsolete information and ensuring that a user is always provided with current advertising that they will have an interest in.

As to claim 2, while Butler and Zigmond disclose wherein at least the first presenting comprises transmitting the segment of programming to a receiver (see Butler at paragraph 32) along with the first and second segment of ancillary information (see Butler at paragraph 19), they fail to specifically disclose a set-top box.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a set top box, which is typically much smaller and lower cost than a personal computer, for receiving and processing broadcast signals for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include a set-top box for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

As to claim 3, while Butler and Zigmond disclose at a receiver (see Butler at Fig. 2), selecting the first segment of ancillary information for overlaying in the first presentation (see Zigmond at column 7, lines 26-36) and selecting the second segment of ancillary information for overlaying the second presentation (see Zigmond at column 14, lines 1-12), they fail to specifically disclose a set-top box.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a set top box, which is typically much smaller and lower cost than a personal computer, for receiving and processing broadcast

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signals for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include a set-top box for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

As to claim 5, Butler and Zigmond disclose wherein the selecting is carried out by selecting one of the segments of ancillary information in accordance with a number of times the segment of programming has been played at the set-top box (see Zigmond at column 14, lines 1-12 and column 13, lines 40-47).

As to claim 6, while Butler and Zigmond disclose transmitting the segment of programming (see Butler at paragraph 32) along with a plurality of segments of ancillary information to a receiver (paragraph 19); and at the receiver, selecting the first and second segments of ancillary information for overlaying in the first and second window from the plurality of segments of ancillary information (see Zigmond at column 7, lines 26-36, column 14, lines 1-12 and column 13, lines 40-47), they fail to specifically disclose a set-top box.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a set top box, which is typically much smaller and lower cost than a personal computer, for receiving and processing broadcast

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signals for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include a set-top box for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

As to claim 7, Butler and Zigmond disclose counting a number of times the segment of programming is presented to a viewer through the set-top box (counting the number of times the inserted ad, and therefore the program holding it, have been played; see Zigmond at column 13, lines 40-47 and column 14, lines 1-13).

As to claim 8, Butler and Zigmond disclose selecting the first and second segments of ancillary information in accordance with the number of times the segment has been previously presented (wherein an ad is replaced and no longer shown if it has been shown too many times; see Zigmond at column 14, lines 1-12 and column 13, lines 40-47).

As to claim 14, Butler and Zigmond disclose wherein the segment of programming includes a marker indicative of a location for overlaying the window (see Butler at paragraph 52).

As to claim 15, Butler and Zigmond disclose wherein the first window comprises a default window (the initial ad window associated with the media; see Butler at paragraphs 21 and 4) and wherein the second window overlays the first window (wherein the new ad will replace the previous ad in the program; see Zigmond at column 14, lines 1-12).

As to claim 16, Butler and Zigmond disclose at a service provider, selecting the first segment of ancillary information for overlaying in the first presentation (service provider solely deciding how ads are to be inserted; see Zigmond at column 11, lines 50-59) and selecting the second segment of ancillary information for overlaying the second presentation (service provider solely deciding how ads are to be inserted; see Zigmond at column 11, lines 50-59).

As to claim 19, Butler and Zigmond disclose receiving the segment of programming along with a plurality of segments of ancillary information at a service provider (see Butler at paragraph 19); and at the service provider, selecting the first and second segments of ancillary information for overlaying in the first and second window from the plurality of segments of ancillary information (service provider solely deciding how ads are to be inserted; see Zigmond at column 11, lines 50-59).

As to claim 23, Butler and Zigmond disclose wherein the first window comprises a default window (the initial ad window associated with the media; see Butler at paragraphs 21 and 4) and wherein the second window overlays the first window (wherein the new ad will replace the previous ad in the program; see Zigmond at column 14, lines 1-12).

As to claim 25, Butler discloses a method of presenting entertainment program material (paragraph 13), comprising:

presenting a first presentation of the segment of programming (paragraph 15 and 19) having a static window overlaying the segment of programming (window holding content pre-defined by the provider; paragraphs 20, 21, 48 and 58), the static window containing a static segment of ancillary information relevant to the segment of programming (containing content predefined by the provider to be shown at a set time; paragraphs 4, 21 and 48).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and a window overlaying the segment of programming (paragraph 20, 21 and 58), the window containing a segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), he fails to specifically disclose a variable segment of ancillary information relevant to the segment of programming.

In an analogous art, Zigmond discloses a broadcast receiving system (Fig. 3; column 7, lines 1-25) which will present a first segment of information with a first content

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presentation (advertisement inserted into a received program; column 7, lines 26-36) and present a second, variable, segment of information with a second presentation of the content (updated advertisement based upon current time of playback of the recorded program; column 14, lines 1-12) for the typical benefit of ensuring that a user is always provided with current advertising that they will be interested in (column 5, lines 1-14 and column 14, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include a variable segment of ancillary information relevant to the segment of programming, as taught by Zigmond, for the typical benefit of removing obsolete information and ensuring that a user is always provided with current advertising that they will have an interest in.

As to claim 26, Butler disclose a television receiver (Fig. 2; paragraphs 16-18), comprising:

a receiver (Fig. 2, receiver, 58) for receiving signals representing segments of programming (paragraph 31 and 32) and signals representing a plurality of segments of ancillary information (paragraphs 19 and 32), and delivering the signals representing segments of programming to a display interface (video subsystem, 66; paragraph 34);

a central processor (processor, 52);

program means operating on the programmed processor (controlling the system; paragraph 31) for:

delivering a first presentation of a segment of programming (paragraph 15 and 19) having a first window overlaying the segment of programming to the display interface (paragraphs 20, 21 and 58), the first window containing a first segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and a window overlaying the segment of programming (paragraph 20, 21 and 58), the window containing a segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), he fails to specifically disclose a second segment of ancillary information relevant to the segment of programming, wherein the first and second segments of ancillary information are selected from the plurality of segments of ancillary information in accordance with a selection algorithm and a set top box.

In an analogous art, Zigmond discloses a broadcast receiving system (Fig. 3; column 7, lines 1-25) which will present a first segment of information with a first content presentation (advertisement inserted into a received program; column 7, lines 26-36) and present a second segment of information with a second presentation of the content (updated advertisement in playback of recorded program; column 14, lines 1-12), using a selection algorithm (column 11, lines 31-49) based upon a count of a number of presentations of the segment of programming (column 14, lines 1-12 and column 13, lines 40-47) for the typical benefit of ensuring that a user is always provided with current advertising that they will be interested in (column 5, lines 1-14 and column 14, lines 1-9).

Additionally, the examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a set top box, which is typically much smaller and lower cost than a personal computer, for receiving and processing broadcast signals for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include a second segment of ancillary information relevant to the segment of programming, wherein the first and second segments of ancillary information are selected from the plurality of segments of ancillary information in accordance with a selection algorithm, and wherein the selection algorithm is based a count of a number of presentations of the segment of programming, as taught by Zigmond, for the typical benefit of removing obsolete information and ensuring that a user is always provided with current advertising that they will have an interest in.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include a set-top box for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

As to claim 29, Butler and Zigmond disclose counting a number of times the segment of programming is presented to a viewer through the set-top box (counting the

number of times the inserted ad, and therefore the program holding it, have been played; see Zigmond at column 13, lines 40-47 and column 14, lines 1-13).

As to claim 30, Butler and Zigmond disclose selecting the first and second segments of ancillary information in accordance with the number of times the segment has been previously presented (wherein an ad is replaced and no longer shown if it has been shown too many times; column 14, lines 1-12 and column 13, lines 40-47).

As to claim 35, Butler and Zigmond disclose wherein the segment of programming includes a marker indicative of a location for overlaying the window (see Butler at paragraph 52).

As to claim 36, Butler and Zigmond disclose wherein the first window comprises a default window (the initial ad window associated with the media; see Butler at paragraphs 21 and 4) and wherein the second window overlays the first window (wherein the new ad will replace the previous ad in the program; see Zigmond at column 14, lines 1-12).

As to claim 38, Butler disclose a television receiver (Fig. 2; paragraphs 16-18), comprising:

a receiver (Fig. 2, receiver, 58) for receiving signals representing segments of programming (paragraph 31 and 32) and signals representing a plurality of segments of

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ancillary information (paragraphs 19 and 32), and delivering the signals representing segments of programming to a display interface (video subsystem, 66; paragraph 34);

a central processor (processor, 52);

program means operating on the programmed processor (controlling the system; paragraph 31) for:

delivering a first presentation of a segment of programming (paragraph 15 and 19) having a static window overlaying the segment of programming (window holding content pre-defined by the provider; paragraphs 20, 21, 48 and 58), the static window containing a static segment of ancillary information relevant to the segment of programming (containing content predefined by the provider to be shown at a set time; paragraphs 4, 21 and 48).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and a window overlaying the segment of programming (paragraph 20, 21 and 58), the window containing a segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), he fails to specifically disclose a variable segment of ancillary information relevant to the segment of programming.

In an analogous art, Zigmond discloses a broadcast receiving system (Fig. 3; column 7, lines 1-25) which will present a first segment of information with a first content presentation (advertisement inserted into a received program; column 7, lines 26-36) and present a second, variable, segment of information with a second presentation of the content (updated advertisement based upon current time of playback of the

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recorded program; column 14, lines 1-12) for the typical benefit of ensuring that a user is always provided with current advertising that they will be interested in (column 5, lines 1-14 and column 14, lines 1-9).

Additionally, the examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize a set top box, which is typically much smaller and lower cost than a personal computer, for receiving and processing broadcast signals for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include a variable segment of ancillary information relevant to the segment of programming, as taught by Zigmond, for the typical benefit of removing obsolete information and ensuring that a user is always provided with current advertising that they will have an interest in.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include a set-top box for the typical benefit of enabling the receipt and display of content signals onto a television display utilizing a common, low cost set top box.

As to claim 39, Butler discloses a storage medium storing (Fig. 2) instructions which, when executed on a programmed processor (paragraph 31), carry out a method of presenting entertainment program material (paragraph 13), comprising:

accessing a segment of programming (paragraph 32);

accessing a plurality of segments of ancillary information relevant to the segment of programming (paragraph 19);

presenting a first presentation of the segment of programming (paragraph 15 and 19) having a first window overlaying the segment of programming (paragraphs 20, 21 and 58), the first window containing a first segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and a window overlaying the segment of programming (paragraph 20, 21 and 58), the window containing a segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), he fails to specifically disclose a second segment of ancillary information relevant to the segment of programming, wherein the first and second segments of ancillary information are selected from the plurality of segments of ancillary information in accordance with a selection algorithm, and wherein the selection algorithm is based upon at least one of 1) a count of a number of presentations of the segment of programming and 2) a random selection algorithm.

In an analogous art, Zigmond discloses a broadcast receiving system (Fig. 3; column 7, lines 1-25) which will present a first segment of information with a first content presentation (advertisement inserted into a received program; column 7, lines 26-36) and present a second segment of information with a second presentation of the content (updated advertisement in playback of recorded program; column 14, lines 1-12), using a selection algorithm (column 11, lines 31-49) based upon a count of a number of

presentations of the segment of programming (column 14, lines 1-12 and column 13, lines 40-47) for the typical benefit of ensuring that a user is always provided with current advertising that they will be interested in (column 5, lines 1-14 and column 14, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include a second segment of ancillary information relevant to the segment of programming, wherein the first and second segments of ancillary information are selected from the plurality of segments of ancillary information in accordance with a selection algorithm, and wherein the selection algorithm is based a count of a number of presentations of the segment of programming, as taught by Zigmond, for the typical benefit of removing obsolete information and ensuring that a user is always provided with current advertising that they will have an interest in.

As to claim 41, Butler discloses a storage medium storing (Fig. 2) instructions which, when executed on a programmed processor (paragraph 31), carry out a method of presenting entertainment program material (paragraph 13), comprising:

presenting a first presentation of the segment of programming (paragraph 15 and 19) having a static window overlaying the segment of programming (window holding content pre-defined by the provider; paragraphs 20, 21, 48 and 58), the static window containing a static segment of ancillary information relevant to the segment of

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programming (containing content predefined by the provider to be shown at a set time; paragraphs 4, 21 and 48).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and a second window overlaying the segment of programming (paragraph 20, 21 and 58), the window containing a segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), he fails to specifically disclose a variable segment of ancillary information relevant to the segment of programming.

In an analogous art, Zigmond discloses a broadcast receiving system (Fig. 3; column 7, lines 1-25) which will present a first segment of information with a first content presentation (advertisement inserted into a received program; column 7, lines 26-36) and present a second, variable, segment of information with a second presentation of the content (updated advertisement based upon current time of playback of the recorded program; column 14, lines 1-12) for the typical benefit of ensuring that a user is always provided with current advertising that they will be interested in (column 5, lines 1-14 and column 14, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include a variable segment of ancillary information relevant to the segment of programming, as taught by Zigmond, for the typical benefit of removing obsolete information and ensuring that a user is always provided with current advertising that they will have an interest in.

As to claims 4, 9, 17, 22, 27, while Butler and Zigmond disclose selecting the first and second segments of ancillary information, they fail to specifically disclose wherein the selection is random.

The examiner takes official notice that it is notoriously well known in the art to make selections between a series of items randomly, such as when a multitude of equally valid items are available, for the typical benefit of easily selecting one of plural ads which are valid for a viewer.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include wherein the selection is performed randomly for the typical benefit of easily selecting one of plural ads which are valid for a viewer.

As to claim 28, Butler and Zigmond disclose wherein the selecting is carried out by selecting one of the segments of ancillary information in accordance with a number of times the segment of programming has been played at the set-top box (see Zigmond at column 14, lines 1-12 and column 13, lines 40-47).

As to claims 10, 11, 12, 13, 31, 32, 33 and 34, while Butler and Zigmond disclose first and second windows, they fail to specifically disclose wherein the windows are the same size and shape, of differing sizes and shapes, overlay the same segment of programming or overlay differing segments of programming.

The examiner takes official notice that it is notoriously well known in the art that overlay window can utilize any display characteristic desired, including any particular size, shape, or position on screen, for the typical benefit of allowing the service provider maximum flexibility in how information is presented to a viewer.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include any of wherein the windows are the same size and shape, of differing sizes and shapes, overlay the same segment of programming or overlay differing segments of programming for the typical benefit of allowing the service provider maximum flexibility in how information is presented to a viewer.

6. Claims 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler and Zigmond as applied to claim 16 above, and further in view of Huizer et al. (Huizer) (5,873,022) (of record).

As to claim 18, while Butler and Moore disclose wherein the selecting is carried out by selecting one of the segments of ancillary information in accordance with a number of times the segment of programming has been previously presented (wherein an ad is replaced and no longer shown if it has been shown too many times; column 14, lines 1-12 and column 13, lines 40-47), they fail to specifically disclose wherein the segment is transmitted by the service provider each time the segment is replayed.

In an analogous art, Huizer discloses a video distribution system (Fig. 1) wherein the service provider (VOD server, 1) acts as a remote video recorder for a user (column

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3, lines 47-58) and provides programming to be played back for a user (column 3, lines 31-58). This provides the typical benefit of reducing the cost of complexity of a home user's equipment by providing video storage at a headend facility.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include wherein the segment is transmitted by the service provider each time the segment is replayed, as taught by Huizer, for the typical benefit of reducing the cost of complexity of a home user's equipment by providing video storage at a headend facility.

As to claim 20, while Butler and Zigmond disclose counting a number of times the segment of programming is presented to a viewer (counting the number of times the inserted ad, and therefore the program holding it, have been played; see Zigmond at column 13, lines 40-47 and column 14, lines 1-13), they fail to specifically disclose wherein the segment is transmitted by the service provider each time the segment is presented.

In an analogous art, Huizer discloses a video distribution system (Fig. 1) wherein the service provider (VOD server, 1) acts as a remote video recorder for a user (column 3, lines 47-58) and provides programming to be played back for a user (column 3, lines 31-58). This provides the typical benefit of reducing the cost of complexity of a home user's equipment by providing video storage at a headend facility.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler and Zigmond's system to include wherein the

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segment is transmitted by the service provider each time the segment is presented, as taught by Huizer, for the typical benefit of reducing the cost of complexity of a home user's equipment by providing video storage at a headend facility.

As to claim 21, Butler, Zigmond and Huizer disclose selecting the first and second segments of ancillary information in accordance with the number of times the segment has been previously transmitted (wherein an ad is replaced and no longer shown if it has been shown too many times; column 14, lines 1-12 and column 13, lines 40-47).

7. Claims 24, 37 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler in view of Vogel (5,446,488).

As to claim 24, Butler discloses a method of presenting entertainment program material (paragraph 13), comprising:

- providing a segment of programming (paragraph 32);

- providing a plurality of segments of ancillary information relevant to the segment of programming (paragraph 19);

- presenting a first presentation of the segment of programming (paragraph 15 and 19) having a first window overlaying the segment of programming (paragraphs 20, 21 and 58), the first window containing a first segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), wherein the segment of ancillary information is selected from the plurality of segments of ancillary information in

accordance with a selection algorithm (selecting a segment based upon timing information; paragraphs 48 and 58).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and an algorithm determining the segment selected to overlay the programming (selecting a segment based upon timing information; paragraphs 48 and 58), he fails to specifically disclose presenting the second presentation having no window overlaying the segment of programming.

In an analogous art, Vogel discloses a television receiving system (Fig. 1; column 1, lines 8-12) wherein programming is received interspersed with non-program material (column 4, lines 13-32 and column 5, lines 30-52) and wherein the program is recorded and played back without the non-program material (column 4, lines 13-32 and column 5, lines 32-52) based upon user payment for the removal of the non-program content (column 5, line 65-column 6, line 18 and column 6, lines 26-40) for the typical benefit of allowing the removal of unwanted program signals (column 3, lines 49-64) while still providing broadcasters with additional revenue (column 3, lines 64-68) and allowing advertisers to more accurately assess what audience is actually viewing their advertisements (column 3, line 68-column 4, line 10).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include presenting the second presentation having no window overlaying the segment of programming, as taught by Vogel, for the typical benefit of allowing the removal of unwanted program signals while

still providing broadcasters with additional revenue and allowing advertisers to more accurately assess what audience is actually viewing their advertisements.

As to claim 37, Butler disclose a television receiver (Fig. 2; paragraphs 16-18), comprising:

a receiver (Fig. 2, receiver, 58) for receiving signals representing segments of programming (paragraph 31 and 32) and signals representing a plurality of segments of ancillary information (paragraphs 19 and 32), and delivering the signals representing segments of programming to a display interface (video subsystem, 66; paragraph 34);

a central processor (processor, 52);

program means operating on the programmed processor (controlling the system; paragraph 31) for:

delivering a first presentation of a segment of programming (paragraph 15 and 19) having a first window overlaying the segment of programming to the display interface (paragraphs 20, 21 and 58), the first window containing a first segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), wherein the first segments of ancillary information is selected from the plurality of segments of ancillary information in accordance with a selection algorithm (selecting the segments based upon program timing information; paragraphs 48 and 58).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and an algorithm determining the segment selected to overlay the programming (selecting a segment

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based upon timing information; paragraphs 48 and 58), he fails to specifically disclose presenting the second presentation having no window overlaying the segment of programming.

In an analogous art, Vogel discloses a television receiving system (Fig. 1; column 1, lines 8-12) wherein programming is received interspersed with non-program material (column 4, lines 13-32 and column 5, lines 30-52) and wherein the program is recorded and played back without the non-program material (column 4, lines 13-32 and column 5, lines 32-52) based upon user payment for the removal of the non-program content (column 5, line 65-column 6, line 18 and column 6, lines 26-40) for the typical benefit of allowing the removal of unwanted program signals (column 3, lines 49-64) while still providing broadcasters with additional revenue (column 3, lines 64-68) and allowing advertisers to more accurately assess what audience is actually viewing their advertisements (column 3, line 68-column 4, line 10).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include presenting the second presentation having no window overlaying the segment of programming, as taught by Vogel, for the typical benefit of allowing the removal of unwanted program signals while still providing broadcasters with additional revenue and allowing advertisers to more accurately assess what audience is actually viewing their advertisements.

As to claim 40, Butler discloses a storage medium storing (Fig. 2) instructions which, when executed on a programmed processor (paragraph 31), carry out a method of presenting entertainment program material (paragraph 13), comprising:

accessing a segment of programming (paragraph 32);

accessing a plurality of segments of ancillary information relevant to the segment of programming (paragraph 19);

presenting a first presentation of the segment of programming (paragraph 15 and 19) having a first window overlaying the segment of programming (paragraphs 20, 21 and 58), the first window containing a first segment of ancillary information relevant to the segment of programming (paragraphs 21 and 4), wherein the segment of ancillary information is selected from the plurality of segments of ancillary information in accordance with a selection algorithm (selecting the segments based upon program timing information; paragraphs 48 and 58).

While Butler discloses presenting a second presentation of the segment of programming (recording and replaying a program; paragraph 35) and an algorithm determining the segment selected to overlay the programming (selecting a segment based upon timing information; paragraphs 48 and 58), he fails to specifically disclose presenting the second presentation having no window overlaying the segment of programming.

In an analogous art, Vogel discloses a television receiving system (Fig. 1; column 1, lines 8-12) wherein programming is received interspersed with non-program material (column 4, lines 13-32 and column 5, lines 30-52) and wherein the program is recorded

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and played back without the non-program material (column 4, lines 13-32 and column 5, lines 32-52) based upon user payment for the removal of the non-program content (column 5, line 65-column 6, line 18 and column 6, lines 26-40) for the typical benefit of allowing the removal of unwanted program signals (column 3, lines 49-64) while still providing broadcasters with additional revenue (column 3, lines 64-68) and allowing advertisers to more accurately assess what audience is actually viewing their advertisements (column 3, line 68-column 4, line 10).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Butler's system to include presenting the second presentation having no window overlaying the segment of programming, as taught by Vogel, for the typical benefit of allowing the removal of unwanted program signals while still providing broadcasters with additional revenue and allowing advertisers to more accurately assess what audience is actually viewing their advertisements.

Conclusion

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda
Patent Examiner
Art Unit 2614

JS



JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600